



July 2, 2002

Ms. Julie Reagan Watson
Assistant General Counsel
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2002-3568

Dear Ms. Watson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165265.

The Texas Department of Human Services (the "department") received a request for "any and all information in the file . . . including the names, addresses, and telephone numbers of the owners of PHOENIX PRIVATE DUTY NURSE/HOME HEALTH, INC., 2450 EL CERRITO DRIVE, DALLAS, TEXAS 75228." You state that some responsive information will be released to the requestor. You advise that you are withholding reports, records, and working papers used or developed in an investigation under chapter 142 under section 142.009(d) of the Health and Safety Code, pursuant to a previous determination issued in Open Records Letter No. 2001-5348 (2001). You claim that a portion of the requested information is excepted from disclosure under sections 552.101 and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that section 552.301(b) provides that "[t]he governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the 10th business day after the date of receiving the written request [for information]." You acknowledge that the department failed to timely request a decision from this office. Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is presumed

to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.” The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or that third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). As you raise sections 552.101 and 552.137 of the Government Code, we will address your arguments against disclosure.

Section 552.101 of the Government Code protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information protected by other statutes. You claim that the submitted financial information and criminal history record information constitute information provided to the department by the healthcare facility as required under section 142.004 of the Health & Safety Code, and that these records are confidential under section 142.004(d). Section 142.004(d) provides:

Information received by the department relating to the competence and financial resources of the applicant or a controlling person with respect to the applicant is confidential and may not be disclosed to the public.

Health & Safety Code § 142.004(d). Based on your representations and our review of the submitted information, we agree that the financial information and the criminal history record information that you seek to withhold is confidential and must be withheld by the department under section 552.101 of the Government Code in conjunction with section 142.004(d) of the Health and Safety Code.

Furthermore, you contend that the social security numbers contained in the submitted information may be confidential under section 552.101 in conjunction with federal law. A social security number or “related record” may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers contained in the submitted records are confidential under section 405(c)(2)(C)(viii)(I) and are therefore excepted from public disclosure under section 552.101 on the basis of the federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security numbers, the department should ensure that the social security numbers were not obtained or are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Finally, you contend that the submitted information also contains e-mail addresses that are excepted from disclosure under section 552.137 of the Government Code. Section 552.137 makes confidential “[a]n e-mail address of a member of the public that is provided for the

purpose of communicating electronically with a governmental body.” Gov’t Code § 552.137(a). However, the e-mail addresses that you have highlighted belong to a corporation, and not to a member of the public. These e-mail addresses, therefore, are not confidential and thus, may not be withheld under section 552.137.

In summary, the financial information and the criminal history record information that you seek to withhold are confidential and must be withheld by the department under section 552.101 of the Government Code in conjunction with section 142.004(d) of the Health and Safety Code. Prior to releasing any social security numbers, the department should ensure that the social security numbers were not obtained or are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body.

Id. § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 165265

Enc. Submitted documents

c: Ms. Erin Hillier
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(w/o enclosures)